

**BOROUGH OF DUMONT  
BERGEN COUNTY, N.J.  
ETHICS BOARD  
SEPTEMBER 20, 2012 MINUTES**

Flag Salute

**SUNSHINE LAW:** The notice requirements of the Open Public Meetings Act of the State of New Jersey have been satisfied by the inclusion of the date, time, and place of this regular meeting in the annual schedule and notice of regular meetings of the Ethics Board. Such annual schedule and notice of regular meetings is posted at Borough Hall, was sent to **The Record** and the **Ridgewood News**, posted on the Borough website and filed with the Borough of Dumont on November 21, 2011.

**ROLL CALL:** Thomas Ciotti, Jena Edone, Adriann Green, John McKenna, Ted Pomeroy-present  
Thomas Reagan-absent

Also in attendance was Anne Marie Rizzuto, Board Attorney, Council Liaison, Matthew Hayes and Board Secretary, Kathy Schaefer.

Copies of the July 19, 2012 minutes were forwarded to the Board members prior to the meeting.

Motion to approve the minutes of July 19, 2012: Mr. Ciotti

Second: Mr. Pomeroy

All in favor: Aye

Copies of the July 19, 2012 were given to the Board members at the meeting.

Motion to approve the Closed Session minutes of July 19, 2012: Mr. Pomeroy

Second: Ms. Edone

All in favor: Aye

Motion to open the meeting to the public: Mr. Ciotti

Second: Mr. Pomeroy

All in favor: Aye

Mr. Richard McLaughlin, 358 Prospect Avenue, Dumont, asked that if during this process, the Board had a chance to debrief or question individuals mentioned very frequently in the complaint. He will leave that as a question and asked the Board Attorney if she would get back to him; she stated yes. He stated the other question he has is in order to avoid the appearance of a conflict of interest, he just wonders how it sits with anyone named in the complaint as being the person who selected the Board members to sit on it and who will be judging the individual in this complaint. It could give the appearance of a conflict of interest and he just wonders if we have taken that into consideration and if not, would you please take that into consideration. It might be just for people hired after this whole thing started. Ms. Green stated that the board is not hired. Mr. McLaughlin stated or for people he brought on after that date. Then there is

something about a couple of changes about amendments, Items 11, 12 and 13, he was wondering how he could go about getting copies of those.

Ms. Rizzuto stated in answer to Mr. McLaughlin's last question which is the amendments, that if he stays at the meeting, he will hear what the contents of the amendments are and until they are finalized, in other words, while they are still drafts they are not subject to the Open Public Records Act, so they generally are not available although there would be no reason for not providing the draft in this instance because it is not a heavily negotiated amendment, but the process with this amendment is that the Board is just going to review tonight and we have to get state approval before we adopt it. It still has to go through a couple of months process before we even get it as a final approved draft that we can adopt.

She stated that with respect to your second question, the appearance of conflict of interest, she appreciates what the member of the public is saying, however, I believe that each member of the Board took an oath upon appointment to this Board and that you are sworn to uphold the United States constitution, the New Jersey constitution and the borough ordinances, as well as this Board's Code of Ethics and other resolutions that we have adopted so that if there is a conflict that you feel due to your appointment by someone that you may have to act to pass judgment on, then you should recuse yourself. However, if you are upholding your oath and being objective about matters that might come before this Board, there should be no conflict of interest.

Ms. Rizzuto stated with respect to the appearance of conflict of interest, not too long ago the rules of professional conduct and the body of law emanating from them was changed to negate the appearance standard, appearance of conflict of interest was a standard by which people were judged by. The rules of professional conduct for lawyers were changed to eliminate or negate the appearance standard because it was too ambiguous to be fairly applied – it became a sword or a hammer against people being able to do their duty without being accused of perhaps you had the appearance of a conflict of interest. In her representation of board members, she does generally advise that if you have a true conflict of interest, you should be recusing yourself in any matter for any subject. A board member always has the opportunity to recuse themselves; on the other hand, you also have to take your responsibility seriously and to vote and do your duty on your board as much as possible.

Mr. McLaughlin stated that you can take the appearance out and he is asking then if the target of the complaint should recuse himself because he was the subject of this complaint. Ms. Rizzuto stated you are asking a different question now; should the target of the complaint recuse himself? Mr. Ciotti asked if the target of the complaint knew he was the named in the complaint. Ms. Rizzuto stated that we have preserved anonymity as to the identity of the target of the complaint because the board's governing documents require us to preserve anonymity and our minutes will continue to preserve anonymity. Ms. Rizzuto asked if anyone felt they had a conflict in being able to pass on voting on any pending issues with respect to pending complaint. Councilman Hayes stated that the Mayor and Council approve the appointments of all members of the Ethics Board.

Ms. Rizzuto stated to Mr. McLaughlin with regard to his first question regarding an interview with the target or anyone named in the complaint, the answer to that is no and she thinks we will

see as we go along with tonight's agenda where the board is at with the complaint. Since there is no other member of the public present, we should close the public portion of the meeting.

Motion to close the meeting to the public: Ms. Edone

Second: Mr. Pomeroy

All in favor: Aye

Ms. Rizzuto stated that she was not present at the July 19<sup>th</sup> meeting and there were a number of motions that were placed before the Board, they are not improper motions – they are all valid motions, except they were taken in closed session. We have to correct that deficiency. Any actions of Board members and any decision have to be taken during the open public session and at the time, you were in closed session.

Motion to revoke all actions taken in closed session of July 19, 2012: Mr. Ciotti

Second: Ms. Edone

Roll Call Vote: Thomas Ciotti, Jena Edone, Adriann Green, John McKenna, Ted Pomeroy-Aye  
Motion carried.

Ms. Rizzuto stated that when we had our meeting in May; at which time Ms. Edone was not yet appointed, and the Board had determined in open public session that we did not have jurisdiction to hear the complaint. At the July meeting, there was discussion in closed session and a different conclusion was made with respect to the jurisdictional issue, but there was still a motion that there was no violation of the Code of Ethics. The current status right now is that as of May 2012 it was determined that there was no jurisdiction and as of right now, the Board may want to re-open that motion.

Motion made that we have no jurisdiction to hear the complaint: Mr. Pomeroy

Second: Mr. Ciotti

Roll Call Vote: Thomas Ciotti-against; Jena Edone-against; Adriann Green-in favor;  
John McKenna-against; Ted Pomeroy-in favor.

It has now been determined that the Board does have jurisdiction.

Motion to go into closed session: Ms. Edone

Second: Mr. Ciotti

All in favor: Aye

Councilman Hayes and Mr. McLaughlin left the meeting.

Council Liaison Hayes and Mr. McLaughlin, a member of the public, re- joined the meeting.

Motion that we find the target of the complaint was not a serving public official at the time that the allegations were made: Mr. Pomeroy

Second: Ms. Edone

Roll call vote: Thomas Ciotti-aye; Jena Edone-aye; Adriann Green-aye; John McKenna-nay;  
Ted Pomeroy-aye

Motion carried

With respect to advising the Council about the Board's decision and the course of action the Board wants to take from here, a motion is not needed, she stated she will go ahead and give a short statement to the Council on the complaint, what the Board found in its decision-making process and what the Board plans on doing tonight and in the future. All were in agreement with that. The Board Secretary will prepare the correspondence; Ms. Rizzuto will review the contents of it-it will be kept along the lines which the Board has expressed in its motion and we will send it along to the Council.

Councilman Hayes stated that the Board's decision on that was four to one that the complaint is finished. The Board finds by a majority vote that the object of the complaint was not a local government official at the time the allegations are set forth – the dates.

Ms. Rizzuto stated that in our discussions of the pending complaint and looking at the definition of local government officer as well as she having advising the Board of some instances where the time period between being elected and being sworn in is a time period where generally it's been found that the person is not an official because he hasn't been sworn in. The Board asks that we look at an amendment to cover that period that if you are elected but not sworn in, we still want the Dumont Code of Ethics to apply to you. We want incoming officials to act in accordance with the Code of Ethics. The proposed change to Resolution 07-01, Section 1.2 Definitions is: "Means any person...(1) elected (even if not yet sworn in) or appointed to any office of a local government agency...". All were in agreement with this.

The second proposed amendment has to do with advisory opinions. We had an issue arise while looking at the complaint as to the Board being able to issue an advisory opinion for prospective matters, matters that might occur in the future, versus something that happened in the past. She stated that what she has suggested here it making it clear, the Board can issue an advisory opinion on any subject that is covered by our Code of Ethics or our Local Finance Disclosure Law, whether it is something that occurred a year ago or will happen two months from now. She wanted to put this whole amendment in, it is a whole new paragraph. All are in agreement with the amendment but we are not voting for this yet because we need to get approval from the state first. Our ordinance and resolution follow each other so both have to be changed. She will format them and the Board Secretary will send them to the State. It will probably be months before they get back to us.

Motion made to have Board Attorney finalize changes to Borough Code of Ethics and Borough Code 31 and have Board Secretary send them to the State: Mr. Ciotti

Second: Ms. Edone

All in favor: Aye

Copies of the Board Attorney's invoice dated September 20, 2012 were distributed to the Board members at the meeting. Ms. Rizzuto stated that there was an increase in the budget for this year which was approved and she thinks they will need to approve a slight amount more. She will work on the projected amount tomorrow. She advised that tonight's meeting is not billed yet and finalizing the ordinance and the resolution is not billed yet. If we can avoid increasing the budget this year, we will.

Motion to approve the Board Attorney's invoice of September 20, 2012: Ms. Edone  
Second: Mr. McKenna  
All in favor: Aye

Copies of Resolution 12-03 Authorizing Fair and Open Process and Legal Notice for Request for Qualifications for Ethics Board attorney for 2013 were sent to members of the Board prior to the meeting.

Motion to approve Resolution 12-03: Mr. Ciotti  
Second: Ms. Green  
All in favor: Aye

Copies of Resolution 12-04 Establishing Meeting Schedule for 2012 were sent to the members of the Board prior to the meeting.

Motion to approve Resolution 12-04: Ms. Edone  
Second: Ms. Green  
All in favor: Aye

Motion to adjourn at 8:15pm: Mr. Pomeroy  
Second: Mr. Ciotti  
All in favor: Aye